

BARAFF, KOERNER, OLENDER & HOCHBERG, P.C.

ATTORNEYS AT LAW

5335 WISCONSIN AVENUE, N.W., SUITE 300
WASHINGTON, D.C. 20015-2003

(202) 686-3200

September 1, 1992

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP R. HOCHBERG
AARON P. SHAINIS
LEE J. PELTZMAN
MARK J. PALCHICK
JAMES E. MEYERS
ALAN E. ARONOWITZ

OF COUNSEL

ROBERT BENNETT LUBIC

FAX: (202) 686-8282

RECEIVED

SEP - 1 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
RECEIVED

SEP - 1 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Re: File No. BPED-911119MC

Dear Ms. Searcy:

On behalf of Triad Family Network, there is transmitted herewith an original and four (4) copies of its **Reply to Opposition to Petition to Deny** with respect to the above-referenced matter.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,



B. Jay Baraff
Counsel for
TRIAD FAMILY NETWORK

Enclosures

SEP 2 2 14 PM '92

RECEIVED

RECEIVED

SEP - 1 1992

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Application of:)
)
POSITIVE ALTERNATIVE RADIO, INC.) File No. BPED-911119MC
)
For Construction Permit for New)
FM Broadcast Station on)
Channel 207A at Asheboro, NC)

TO: Chief, Audio Services Division
Mass Media Bureau

REPLY TO OPPOSITION TO PETITION TO DENY

Triad Family Network ("TFN"), by its attorneys, hereby replies to the Opposition filed by Positive Alternative Radio, Inc. ("PAR") to TFN's Petition to Deny the captioned application. In response thereto, the following is noted:

PAR's ad hominem attack upon TFN should be completely disregarded. TFN had every right, pursuant to the Communications Act and the FCC Rules, to file its Petition to Deny. PAR would impute some sinister motive because of the fact that TFN and PAR are mutually-exclusive applicants. This mutual exclusivity was expressly acknowledged in the Petition, and, in fact, formed the basis for TFN's standing under the Communications Act to file the Petition. At the time of designation for hearing, if it occurs, the Commission will undoubtedly designate such issues as it sees fit. TFN's Petition sought to point out to the Commission significant -- and as yet uncured -- deficiencies in the PAR application,

which deficiencies should result in denial of the PAR application as it presently stands.

In its Petition, TFN raised significant engineering and technical issues concerning the problems inherent in the PAR application, stemming largely from PAR's proposal to sidemount its directional FM antenna on a tower of an AM station's directional array, at a height in close proximity to the AM station's sampling system. In its Opposition, PAR has simply noted that the same AM station previously had another FM antenna mounted on one of its towers. On information and belief, TFN would point out that, in that instance, the FM antenna was omni directional (as opposed to directional), and was located on the top of the AM station's tower, not side-mounted in close proximity to the sampling loop.

The Opposition, including its Engineering Statement, essentially is a plea for the Commission to issue a Construction Permit, and any problems will be worked out at some later date. In PAR's view, any shortcomings in the application can be supplied at some future date, either before or after issuance of a Construction Permit. If this be the case, the FCC should simply eliminate the engineering-technical portions of its Construction Permit applications.

Significantly, it is only hearsay on the part of PAR's engineering consultant that comes close to addressing the site availability issue raised by TFN. The question remains

whether the AM station realizes the difficulties posed to it
by virtue of PAR's presently-outstanding engineering proposal.

For the reasons stated in TFN's Petition to Deny, and not
refuted in the least in PAR's Opposition, it is respectfully
submitted that the above-captioned application of Positive
Alternative Radio, Inc. should be denied.

Respectfully submitted,

TRIAD FAMILY NETWORK

By 

B. Jay Baraff
Its Attorney

BARAFF, KOERNER, OLENDER
& HOCHBERG, P. C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

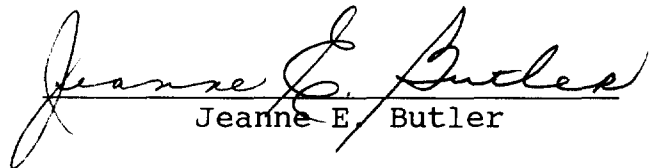
(202) 686-3200

CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **"Reply to Opposition to Petition to Deny"** were sent this 1st day of September, 1992 via first class mail, postage prepaid to the following:

*Larry D. Eads, Esquire
Mass Media Bureau
Federal Communications Commission
1919 M Street, N. W., Room 302
Washington, D. C. 20554

Julian P. Freret, Esquire
Booth, Freret & Imlay
1233 20th Street, N. W.
Washington, D. C. 20036


Jeanne E. Butler

*Hand Deliver